

To: Allison Ginn[aginn@blm.gov]; Tyler Ashcroft[tashcrof@blm.gov]
From: Finch, Kimberly
Sent: 2017-12-05T15:26:36-05:00
Importance: Normal
Subject: Fwd: From Greenwire -- NATIONAL MONUMENTS: Outrage spawns lawsuits challenging Trump's authority
Received: 2017-12-05T15:27:27-05:00

FYI -

AN E&E NEWS PUBLICATION

NATIONAL MONUMENTS

Outrage spawns lawsuits challenging Trump's authority

Jennifer Yachnin, E&E News reporter

Published: Tuesday, December 5, 2017

Outdoor retailer Patagonia changed its website to protest President Trump's decision to shrink two national monuments. Patagonia.com

SALT LAKE CITY — Five Native American tribes who lobbied to create Bears Ears National Monument in Utah expressed anger at President Trump's decree yesterday removing more than 1.1 million acres from protected status, calling it a "slap in the face."

In response to Trump's decision to reduce the southeastern Utah site, tribal leaders filed a federal lawsuit last night seeking to block the proclamation and retain the 1.35-million-acre monument's original boundaries.

The lawsuit is among a handful of similar complaints filed in the wake of Trump's visit here to sign two presidential proclamations reducing both Bears Ears and the Grand Staircase-Escalante National Monument, which was shrunk to 1 million acres (***E&E News PM***, Dec. 4).

"The Navajo Nation is not just going to sit this one out. We always say that we're a strong nation, and we are, and we're going to fight this," Navajo Nation Vice President Jonathan Nez said in a press conference with other tribal leaders.

"What transpired ... it's just hard for me to comprehend. It's just another slap in the face for a lot of us," he added.

The Navajo, Ute, Ute Mountain Ute, Hopi and Zuni tribes filed their lawsuit in the U.S. District Court for the District of Columbia last night. The case will only address the Bears Ears monument, while other unrelated lawsuits will target the changes to Grand Staircase-Escalante.

In the 61-page **complaint**, the tribes accuse Trump of working to revoke Bears Ears and replace it with two smaller monuments, rather than simply reduce the site, as the administration has described its actions.

Under the proclamation Trump signed, the sprawling Bears Ears monument kept its name but became two disconnected units: the 72,000-acre Indian Creek Unit and the 130,000-acre Shásh Jaa' Unit.

"The President was plainly aware that he lacked the authority to revoke a monument and is thus transparently attempting to evade that strict limitation by purporting to reduce it," the lawsuit states, "but, as described herein, the President's action must be viewed as a revocation, particularly with respect to all objects not included in the two 'new' monuments."

The tribes argue that Trump violated the Antiquities Act of 1906, which allows presidents to designate federal lands as monuments in order to protect areas of cultural, historic or scientific value.

The lawsuit alleges that Trump does not have the authority to reduce a monument, much less revoke one in its entirety.

"The President has exceeded the limited authority delegated to his office, and violated the Antiquities Act and the separation of powers established in the Constitution," the lawsuit says.

Although past presidents have altered the boundaries of national monuments — the last time occurred in 1963 when President Kennedy removed and added lands to the Bandelier National Monument in New Mexico — none of those actions has ever been tested in court.

Tribal leaders yesterday also slammed the Trump administration for what they described as relying too heavily on the Aneth Chapter of the Navajo Nation — whose members had opposed the Bears Ears monument as President Obama established it in late 2016.

"The Aneth Chapter is a local government of the Navajo Nation, kind of the same way that San Juan County is a local government of the state of Utah," said Navajo Nation Attorney

General Ethel Branch. "When you want to know where the state of Utah stands on an issue, you go to the governor or you go to the Legislature. You don't go to the county ... and speak to a commissioner."

Among the lawmakers who appeared on stage yesterday with Trump was San Juan County Commissioner Rebecca Benally, a member of the Aneth Chapter who has been an outspoken opponent of the monument.

Benally refused to be interviewed by E&E News yesterday, but told *The Washington Post* earlier this year that the Aneth Chapter deserved to be heard because it is the only unit of the Navajo Nation located entirely within San Juan County.

"The only people that stood with us is the San Juan government and the Utah Legislature," she said at the time.

Interior Secretary Ryan Zinke praised Benally during his remarks yesterday, noting he had met with her during his tour of the Beehive State.

"Thank you for showing me your lands. For walking with you on your sacred lands and for teaching me that the Navajo Nation is proud," he said.

'The President Stole Your Land'

In addition to the tribes' lawsuit, a host of other opponents filed legal challenges yesterday to the president's actions.

Earthjustice filed the first of two lawsuits it plans to pursue — starting with the Grand Staircase-Escalante monument, to be followed in the coming days by another targeting the Bears Ears monument — separating the cases because of technical differences between both the sites' contents and their respective legal histories.

"These are two different monuments, two different kinds of monuments," explained Earthjustice attorney Heidi McIntosh. She compared the cultural artifacts that are key to the acreage in Bears Ears with the mix of archaeological sites and areas of cultural importance in Grand Staircase-Escalante.

Created by President Clinton in 1996, Grand Staircase-Escalante also has a more significant legislative record, including instances in which Congress itself amended the boundaries of the site as well as paid out \$50 million to Utah as part of a land exchange ([Greenwire](#), May 2).

That monument also has a management plan in place.

"This is a really a disgraceful attack on natural and cultural resources that should have been held in trust for the benefit of all Americans, and nothing like this has ever happened before,"

McIntosh said.

Both lawsuits are expected to focus on Congress' delegation of authority to the president under the Antiquities Act.

Earthjustice will argue that only Congress, under the Constitution's Property Clause, retains the authority to diminish or dissolve national monuments.

Although Congress gave the president some of its power under the Antiquities Act, that "delegation of power is really narrow," McIntosh said.

"It focuses on the president's lack of authority under the Antiquities Act to remove monument designations in whole or in part. That really stems from the bedrock constitutional principle of separation of powers. In this case, Congress has the exclusive power over federal public lands," she added.

Earthjustice is representing eight organizations in the **first lawsuit**: the Wilderness Society, the Grand Canyon Trust, the Sierra Club, Defenders of Wildlife, Great Old Broads for Wilderness, the Center for Biological Diversity, WildEarth Guardians and the Western Watersheds Project. The Southern Utah Wilderness Alliance and the Natural Resources Defense Council are also co-plaintiffs but are represented by in-house counsel.

In addition, a coalition of nonprofit organizations has filed its own lawsuit challenging Trump's reductions to the Grand Staircase-Escalante monument.

That **lawsuit** filed by the law firm Covington & Burling LLP on behalf of the Conservation Lands Foundation, Grand Staircase Escalante Partners and the Society of Vertebrate Paleontology, likewise accuses the president of violating the Constitution.

"The President's attempt to eliminate Grand Staircase's protections intrudes on Congressionally reserved powers under the Constitution in violation of bedrock separation of powers principles, ignores explicit post-proclamation Congressional enactments that assert Congress' sole prerogative over the Monument's boundaries and attendant protections," the lawsuit says.

It adds: "This action puts at risk a key part of our nation's natural legacy."

Conservation Lands Foundation Executive Director Brian Sybert criticized the Interior Department's short review of dozens of national monuments earlier this year, suggesting its outcome was predetermined.

"This administration will stop at nothing to ensure that their private industry cronies can profit from the destruction of even our most highly valued public lands, to the point of undoing protections that have been in place for two decades," Sybert said. "We look forward to fighting this indefensible and illegal order in the courts — where facts still matter."

In addition to those lawsuits, outdoor gear maker Patagonia is expected to file its own lawsuit targeting the reductions to the Bears Ears monument. That case will also include Friends of Cedar Mesa, Utah Diné Bikéyah and Archaeology Southwest.

"We've fought to protect these places since we were founded, and now we'll continue that fight in the courts," said Patagonia CEO and President Rose Marcario.

The company replaced the front page of its website yesterday with a plain black screen with white text that read: "The President Stole Your Land."

'No serious question'

In a statement to reporters, the House Natural Resources panel rejected suggestions that Trump's actions are illegal, labeling the assertions a "myth."

"Propagators of this particular myth put themselves in the absurd position of claiming that one unilateral presidential action can bind every successor in perpetuity," the statement said. "If this seems more reminiscent of an autocracy than a constitutional democracy responsive to the demands of the people, that's because it is."

Conservative legal scholars likewise refuted arguments outlined in the initial batch of lawsuits challenging the president's actions.

"Just as no Congress can bind a future Congress, so can no president bind the nation in perpetuity," said Mountain States Legal Foundation President William Perry Pendley.

He added: "President Trump has the moral, legal and constitutional authority to do what he did today. Westerners are thrilled he had the courage to take action."

Like other opponents of the monument, Pendley argued that the Utah sites exceeded the Antiquities Act language that calls for the "smallest area compatible with the proper care and management of the objects to be protected."

Pacific Legal Foundation constitutional legal fellow Todd Gaziano predicted that the challenges to Trump's proclamations would be unlikely to succeed.

"There is no reasonable doubt that the president has authority to completely revoke or significantly reduce existing national monuments. There are many hard or uncertain questions in the law, but this is not one of them," he said. "Anyone can file a lawsuit, but the federal courts will have no serious question about President Trump's lawful authority to revoke or shrink any national monument."

But some conservative environmental activists pushed back, siding with their liberal counterparts.

"Today President Trump took a wrecking ball to America's natural and cultural heritage. In

doing so, he showed total disregard for the law, for the ethic of stewardship and for the many small businesses that depend on these national monuments," said Conservatives for Responsible Stewardship President David Jenkins.

Want to read more stories like this?

[Click here](#) to start a free trial to E&E -- the best way to track policy and markets.

ABOUT GREENWIRE – THE LEADER IN ENERGY AND ENVIRONMENT NEWS

Greenwire is written and produced by the staff of E&E News. The one-stop source for those who need to stay on top of all of today's major energy and environmental action with an average of more than 20 stories a day, Greenwire covers the complete spectrum, from electricity industry restructuring to Clean Air Act litigation to public lands management. Greenwire publishes daily at 1 p.m.

E&E News
122 C Street NW 7th Floor Washington, DC 20001
Phone: 202-628-6500 Fax: 202-737-5299
www.eenews.net

All content is copyrighted and may not be reproduced or retransmitted without the express consent of Environment & Energy Publishing, LLC. [Click here](#) to view our privacy policy.